



Comptroller General
of the United States

2351912

Washington, D.C. 20548

Decision

Matter of: Kleespie Tank and Petroleum Equipment

File: B-258634

Date: December 20, 1994

DECISION

Kleespie Tank and Petroleum Equipment (Kleespie) protests the Department of Agriculture's award of a contract to Seneca Corporation pursuant to invitation for bids (IFB) No. APHIS 4-023. The protester contends that Seneca's bid is nonresponsive. We deny the protest.

Issued on July 6, 1994, the IFB requested bids to remove and replace several underground storage tanks at the APHIS National Veterinary Services Laboratory in Ames, Iowa. Four bids were received by the August 8 bid opening date. The contracting officer awarded the contract to Seneca on September 8, and Kleespie filed its protest in our Office on September 27.

In its initial protest letter, Kleespie asserted that Seneca's bid was nonresponsive because it did not include a price for line item No. B.3.1 for the "Disposal of excavated petroleum contaminated material." Kleespie argued that, because Seneca had entered "N/A" instead of a dollar figure in the space provided in the IFB for this line item, Seneca's bid was nonresponsive and, therefore, the contract should be terminated.

The contracting officer reported that Seneca's bid stated a price of \$79.20 per cubic yard for line item B.3.1, "Disposal of excavated petroleum contaminated material." Included with the contracting officer's report was a copy of Seneca's bid that corroborated this fact. Accordingly, as Seneca's bid did, in fact, state a dollar figure for the protested line item, we deny this basis of protest.

In its comments on the agency's protest report, Kleespie raised several new grounds of protest. After examining the attachments to the report, including Seneca's bid, Kleespie now contends that Seneca's bid is nonresponsive because it stated "N/A" instead of a dollar price for another line item (No. B.3.3, "Treatment of contaminated soil on-site").

Kleespie also alleges several omissions in section K (representations, certifications, and other statements of offerors) of Seneca's bid (e.g., section K.10, women-owned small business representation). These protest allegations are untimely under our Bid Protest Regulations which require that protests based upon other than solicitation defects must be filed within 10 days after the protester knew, or should have known, the bases for protest. 4 C.F.R. § 21.2(a)(2) (1994).

Since this procurement was conducted by sealed bidding, there was a public opening of the bids (on August 8, 1994), Federal Acquisition Regulation (FAR) § 14.402-1(a), and once bids were opened, the public, including the protester, was permitted to examine the bids submitted. FAR § 14.402-1(c). It appears from the record that Kleespie made no effort to examine or obtain a copy of any of the bids until after it received the award announcement (shortly after September 8). Where there is a public bid opening, we think it is incumbent upon bidders to act promptly after bid opening to obtain information on the bids received, including copies of the bids themselves if necessary, so that upon receipt of notice of award the bidders will be aware of any alleged defect in the winning bid that would provide a basis for protest. See Thomas May Constr. Co., B-255683, Mar. 23, 1994, 94-1 CPD ¶ 210. Here, we find that Kleespie did not diligently pursue these protest bases (insertion of N/A into line item No. B.3.3., Treatment of contaminated soil on-site, and omitted representations) as it should have promptly sought the publicly available information prior to award.

Furthermore, Kleespie knew that Seneca had bid "N/A" for line item No. B.3.3 in early August, because the contracting officer sent Kleespie a copy of the abstract of bids that clearly showed Seneca's bid for all three line items shortly after bid opening.¹ As Kleespie knew this basis for protest from a reading of the abstract in early August, it was incumbent upon Kleespie to protest no later than receipt of the award notification, rather than waiting until receipt of Seneca's bid with the protest report. See Corbin Superior Composites, Inc., B-236777.2, Jan. 2, 1990, 90-1 CPD ¶ 2. Because Kleespie did not protest this issue or the omissions in Seneca's bid representations until it filed its

¹The contracting officer states that she telecopied the abstract of bids to Kleespie "[a] couple of days after bid opening." It appears from the copy of the abstract provided our Office by Kleespie that Kleespie actually received the abstract on August 10.

comments on November 7, approximately 3 months after bid opening and 1-1/2 months after receiving the award notification, these issues are untimely and will not be considered.

The protest is denied.


Michael R. Golden
Assistant General Counsel